REMARKS

Status of the Claims

Claims 12-24, 27-30, 32-35, 37, and 39-41 are pending.

Claims 12, 20, and 33 are amended.

Applicant appreciates the Examiner's examination of the application. Applicant appreciates the Examiner's withdraw of the rejection under 35 U.S.C. § 102 based on Koga. While claims 12-16 and 18 are still rejected in the present Office action, all rejections relating to 35 U.S. C. § 102 have been withdrawn. Additionally, Applicant acknowledges withdraw of the rejection under 35 U.S.C. § 103 of claim 40 based on the combination of Koga, Knepler, and Beaulieu.

Rejections Under 35 U.S.C. §103 (a)

With regard to the rejections under 35 U.S.C. §103(a), the three various rejections of the claims are dependent on the combination of Koga and Knepler as the primary references. As such, if the Koga and Knepler references fail, the remaining references will not sustain the rejections under 35 USC 103. The failure of the Koga and Knepler references to provide support will result in failure of the other references to provide any additional support. The claims have been rejected under 35 U.S.C. §103 based on the combination of Koga and Knepler; or Koga, Knepler and Beaulieu; or Koga, Knepler, Beaulieu, and Patel. Applicant will address these rejections and claims as a group since the primary discussion relates to the failure of the Koga and Knepler references to provide the primary support for these rejections.

The Koga reference shows a device which includes a tube (7) which extends downwardly into the tank to allow a pump 1 to pump water from a lower portion of the tank. The Koga reference also shows a bubble prevention plate (11) which includes bores (11A) which provide "free passages" for the hot water, as shown in figure 15 (See column 10, lines 26-29). The bubble prevention plate (11) is provided in the tank (2) to prevent bubbles in the boiling water from being sucked into the tube (7) (See column 5, lines 53-55). The plate or wall in Koga

clearly is provided with holes therethrough which allow the intermixing of heated and less heated water in the general volume of the tank.

As shown in figure 15, the bubble prevention plate (11) is shown in cross section, further showing the tube (7), the tank wall (2) and the bores (11A) or free passages. Figure 15 refers to tank 2. Figure 15 does not show an illustration of tank 2A.

Figures 1, 2 and 12-14 are all referred to as "schematic" views of the hot-water tank. In contrast, figure 15 is referred to as "transverse cross section" providing more specificity rather than just a "schematic". Applicant provides the foregoing description of the Koga reference to help illuminate this reference for purposes of this response. The specification and drawings of the Koga reference do not show each and every element recited in the claims.

Claims 12, 20 and 33, as amended, provides a baffle structure with a continuous wall. The baffle structure does not have holes in it as does the Koga reference. Further, the mouth is the only access through which water is received into the cavity. Additionally, the flow of water from the chamber, to the cavity, and out the outlet port is by force of gravity and not a pump. These limitations in claims 12, 20 and 32 further distinguish the claimed invention from the Koga reference.

In contrast, Koga includes holes (11A) to provide "free passages for the hot water" (see Figure 15). Koga does not provide a continuous wall since it has holes in it. These holes provide free passage of water to flow through the wall. The purpose of the plate 11 is merely to provide a buffer to prevent bubbles from the boiling water from passing into the siphon tube (7). As such, the mouth of Koga is not the only access to the cavity. Further, Koga requires a pump to lift the liquid instead of operating by gravity.

In contrast, the claimed invention as set forth in claim 12 requires the baffle structure as set forth therein to facilitate use of the hottest water which rises to the upper portion of the chamber. Furthermore, the outlet port extends through the housing and communicates directly with the lower portion of the cavity extends through the housing proximate to and communicates

directly with the lower portion of the cavity to facilitate flow of the heated water from the upper portion of the chamber into the cavity defined by the baffle.

The claimed invention results in hot water from the upper most portion of the tank spilling into the cavity defined by the baffle, the bottom, and an inside surface of the tank, and being dispensed at a lower portion of the cavity directly through the tank wall proximate to the lower portion of the cavity.

For the foregoing reasons, Applicant respectfully asserts that the amended claims 12, 20 and 33 overcome and is allowable over the rejection under 35 U.S.C. §103. Applicant respectfully requests that the Examiner withdrawal the rejection and allow independent claims 12, 20, and 33, and all of the claims depending therefrom.

Further, with regard to the rejections under 35 U.S.C. §103 (a), it is respectfully submitted that applicants claims are patentable, as the Examiner has failed to establish a *prima facie* case of obviousness. According to section 706.02 (j) of the MPEP the Examiner must meet three basic criteria to establish a *prima facie* case of obviousness:

(1) first, there must be some reasonable suggestion or motivation in the prior art to modify the reference or to combine the reference teachings;

(2) second, there must be reasonable expectation of success in obtaining the claimed invention based upon the references relied upon the Examiner; and

(3) third, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations.

MPEP Section 706.02(j) further requires that the teaching or suggestion to make the modification or reference combination and the expectation of success, must be found in the prior art, and may not be based upon the applicants disclosure.

None of the other references make up for the deficiencies in Koga, either alone or in combination. None of the references have continuous walls defining a cavity in the housing. None of the references provide a mouth on the top edge of the wall to provide the only access into the cavity.

As noted above, Koga does not provide a suggestion or motivation to combine with Knepler to achieve the claimed invention. Rather, if the Koga reference is applied and combined with Knepler this would result in a baffle structure with holes, and a siphon tube extending through the top of the tank. Neither reference has a dispensing tube that exits the tank from the side. Moreover, neither reference shows a dispensing tube extending from the side of the tank and limited to drawing water from the cavity defined by the baffle. Clearly, based on the limitations set forth in independent claims 12, 20, and 33 the combination of Koga and Knepler would not achieve the structure and function of the invention set forth in the independent claims.

Alternatively, application of Koga to reject the claims in the present application under 35 U.S.C. §103 would require sealing of the bores 11A as taught in Koga. This would prevent the Koga reference from providing a structure to performing its intended function as shown and described in Koga. If the claims significantly depart from the teachings of Koga, Koga clearly cannot provide a reasonable suggestion or motivation to combine with other references to achieve the claimed invention.

Second, there is no reasonable expectation of success in obtaining claimed invention based on the cited references. As noted above, Koga teaches structures and functions in contrast to the claimed invention and therefore fails as a primary reference. The other references do not provide any additional disclosure or structures to render obvious the claimed invention.

Finally, the prior art references, based primarily on Koga and Knepler do not teach or suggest all the claimed structural limitations. Clearly, neither Koga nor Knepler provide any teaching or suggestion to provide a baffle structure as set forth in the amended claims. Further, the Beaulieu and Patel references do not provide any other structures to achieve the claimed invention. Beaulieu and Patel show tanks which have absolutely no baffle having the structure set forth in the independent claims.

With the foregoing in mind, Applicant respectfully asserts that the Koga and Knepler references fail as a primary references which are necessary to support a rejection under 35 U.S.C.

§103. Failure of the Koga and Knepler references results in failure of any further combination with Beaulieu and Patel, individually or in combination since the references are devoid of any support for combination with the other cited references. The other references do not satisfy the missing limitations not found in Koga and Knepler.

With the foregoing in mind, Applicant respectfully requests the Examiner to withdraw the rejections under 35 U.S.C. §103 based on Koga in combination with Knepler and one or more of Beaulieu and Patel. Applicant respectfully requests allowance of independent claims 12, 20 and 33 as amended herein and claims 17, 19, 21-24, 27-30, 32, and 34, 35, 37,39-41, respectively.

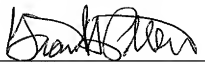
The amendments to the claims are fully supported by the specification and the drawings as originally filed and do not add any new matter. For the foregoing reasons, Applicant respectfully asserts that claims 12-24, 27-30, 32-35, 37, and 39-41 are in condition for allowance based on the amendments herein and as such, allowance is, respectfully requested. Favorable reconsideration of the claims as amended herein is respectfully requested.

If there is any issue remaining to be resolved, the Examiner is invited to contact the undersigned attorney by telephone so that resolution can be promptly affected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and any other fees or shortages in other fees, being charged, or any overpayment in such fees being credited, to the Deposit Account of Barnes & Thornburg LLP, Deposit Account No. 12-0913 acknowledging attorney docket no. (27726-97775).

Respectfully submitted,

BARNES & THORNBURG LLP



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